

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JUSTA LORENA BEAS MARISCAL,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-72714

Agency No. A79-562-226

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Justa Lorena Beas Mariscal, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying the motion to reopen because Beas Mariscal's failure to timely file the motion to reopen before the expiration of her voluntary departure period rendered her statutorily ineligible under 8 U.S.C. § 1229c(d) for the relief she sought. *See De Martinez v. Ashcroft*, 374 F.3d 759, 763 (9th Cir. 2004) (an alien is barred from certain grounds for relief when she files a motion to reopen after the expiration of the voluntary departure period); *Barroso v. Gonzales*, 429 F.3d 1195, 1202 (9th Cir. 2005) ("Where an alien files his motion after his voluntary departure period has expired, the law in this circuit is clear that the BIA may properly deny the motion on that basis.").

PETITION FOR REVIEW DENIED.